

RHS, RBS, RUS, FSA, USDA

§ 1944.153

Grande, Salinas, San German, San Juan, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, and Yauco.
Virgin Islands (2): St. Croix Island and St. Thomas Island.
Western Pacific Territories (5): American Samoa, Federated States of Micronesia, Marshall Islands, Northern Marianas, and Palau.

Subpart C [Reserved]

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

SOURCE: 45 FR 47655, July 16, 1980, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, Subpart D was removed and reserved, effective Feb. 24, 2005.

§ 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

[67 FR 66310, Oct. 31, 2002]

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing for domestic farm labor to be located in areas where a need for farm labor ex-

ists and in making LH grants where there is a pressing need for such facilities in the area for farm laborers and there is a reasonable doubt that the housing can be provided without the grant assistance.

[56 FR 28472, June 21, 1991]

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

Applicant. The applicant for or the recipient of an LH loan or grant.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Board and directors. Includes the governing body and members of the governing body of an organization.

Construct or repair. To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

Development cost. Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and associations of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

Domestic farm laborer. A person who receives a "substantial portion of his or her income" performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family

members residing with such a person. (See the definition for Self-employed in this section and/or exhibit L of this subpart which is available in any Rural Housing Service office.)

Familial status. (See subpart E of part 1944 of this chapter or exhibit B of subpart C of part 1930 of this chapter.)

Family farm corporation or partnership. A private corporation or partnership in which at least 90 percent of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the State,

(2) Legally organized and authorized to carry out the purposes of the loan, and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farm labor. For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.

Farm Labor Contractor. Any person—other than an agriculture employer, an

agriculture association, or an employee of an agriculture employer or agriculture association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year round or migrant farm laborer.

Farm owner. A natural person or persons who are the owners of a “farm” as this term is further defined in this section.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a “farm”.

Home base. A home base State is a State which the farm laborer claims as his/her domicile.

Household furnishings. Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

Housing. New or existing structures which are or will be suitable for decent, safe and sanitary dwelling use by domestic farm labor. “Housing” may include household furnishings and related facilities where appropriate.

HUD. The U.S. Department of Housing and Urban Development.

Individual. A natural person. It may include the spouse.

Individual with handicap. (See exhibit B of subpart C of part 1930 of this chapter.)

LH. Farm Labor Housing.

LH fund(s). May include either loan or grant monies or both in this subpart.

Local broad-based nonprofit organization. An organization, public or private, that operates in one employment area and which:

(1) Is incorporated with the State, Puerto Rico, or Virgin Islands, or a federally recognized Indian Tribe;

(2) Is organized and operated on a nonprofit basis;

(3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime;

(4) Is not grower oriented (majority of board must be nonfarmers);

(5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, national origin, sex, religion, age, handicap, and marital or familial status;

(6) Has at least 25 members for projects with a total development cost of up to \$100,000 and additional members for projects costing more than \$100,000; and

(7) Has a membership reflecting a variety of interests of the area where the housing will be located.

Members and membership. Includes stockholders and stock when appropriate.

MFH. Multi-Family Housing.

Migrant agricultural laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Mortgage. May include any appropriate form of security instrument.

NOFA. Notice of Funds Availability.

Nonprofit organization of farmworkers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership, and whose membership is composed of at least 51 percent farmworkers.

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

Organization. A broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or Political subdivision of State or local government.

Promissory note. May include a bond or other evidence of indebtedness.

Regional or statewide broad-based nonprofit organization. Any organization that operates or plans to operate in more than one employment area, that

provides or is planning to provide labor housing to those areas and that meets the following criteria in addition to those in paragraphs (1) through (6) under the definition for "local broad-based nonprofit organization:"

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

Related facilities. Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

Retired or disabled domestic farm laborer. A "retired domestic farm laborer" is a person who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer (self-certification and employer affidavits may be used as a last resort). A "disabled domestic farm laborer" is a person who is determined to have an impairment which is expected to be of long-continued, indefinite duration, and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician) and who is a domestic farm laborer prior to disability.

RHS. Rural Housing Service.

Seasonal housing. Described in exhibit I of subpart A of part 1924 of this chapter.

Self-employed. The determination of self-employed farm laborers is in accordance with the Common Law test used by the Internal Revenue Service to determine an employer-employee relationship. The Common Law Rules Factors are included in exhibit L of this subpart and are available for review in any Rural Housing Service Office. Exhibit L of this subpart is provided for situations when it is not clear an employer-employee relationship exists for eligible farm labor. The eligibility determination and use of the Common Law Rules Factors may be referred to the Loan Official or State Director for resolution.

Subsequent LH loan or grant. A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined in this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent:

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as stated in Appendix 9 of HB-1-3550 (which is available in any Rural Development office). For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in exhibit J of this subpart.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more

than one year, a yearly average amounting to at least 110 days per year must be computed.

(ii) For housing owned by a farmer, family farm partnership, family farm corporation, or an association of farmers which was initially provided on a nonrental basis, substantial portion of income is earned down housing is provided by the owner as part of employment compensation for farm labor.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage covenants (see § 1944.176(d) (5) of this subpart) must not have adjusted annual income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA or its successor agency under Public Law 103-354 office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially rent free without the non-restrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit.

(i) Income for purposes of this subpart is defined under the terms annual income (describing inclusive and exempted income), adjusted annual income, and adjusted monthly income in paragraph II of exhibit B of subpart C of part 1930 of this chapter.

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of exhibit B of subpart C of part 1930 of this chapter.

Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

(1) Performing outreach efforts to inform and recruit potential LH applicants.

(2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.

(3) Preparing market analyses, feasibility analyses, and financial proformas.

(4) Packaging LH loan and grant applications, as well as applications from other funding sources.

(5) Estimating construction costs and providing oversight during construction periods.

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

[56 FR 28472, June 21, 1991, as amended at 57 FR 59903, Dec. 17, 1992; 58 FR 40951, July 30, 1993; 64 FR 24480, May 6, 1999; 67 FR 66310, Oct. 31, 2002; 67 FR 78328, Dec. 24, 2002]

§ 1944.154 Priorities for tenants' occupancy.

(a) Tenant occupancy in labor housing is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm worker households by ranked category. Moderate income may be served when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for FmHA or its successor agency under Public Law 103-354's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to FmHA or its successor agency under Public Law 103-354 a current analysis of need and demand, identical to the market survey required of applicants in exhibit A-I of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to FmHA Instruction 1930-C, exhibit B VI of this subpart, Renting Procedures, and exhibit E of this subpart, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in FmHA Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.